

Washington County Land Use Authority Meeting
November 23, 2010
(Recording available)

The Washington County Land Use Authority Meeting was held on Tuesday, November 23, 2010 at the Washington County Administration Building, 197 E. Tabernacle, St. George, Utah. The meeting was convened at 1:30 p.m. by Chairman Mike Stucki. Commissioners present: Julie Cropper, Doug Wilson, Kim Ford, Debora Christopher, Rick Jones, Joann Balen and Dave Everett. Also present: Deon Goheen, Planning & Zoning Administrator; Todd Edwards, County Engineer, John Willie, Senior Planner; Rachelle Ehlert, Deputy Attorney; Kurt Gardner, Building Official; Kim Hafen, Clerk/Auditor and Darby Klungervik, Planning Secretary.

Audience attendance: Jerry Eves, Tom Heaton, Steve Prows, Mark Weston, Ben Park

Chairman Mike Stucki led the audience in the Pledge of Allegiance and explained meeting protocol.

Item #1. SPECIAL MEETING: **STAFF COMMENTS.** Review staff comments for each item listed below. Staff initiated.

Item #2. CONDITIONAL USE PERMIT EXTENSION Review use permit to expand the Red Butte Substation to support future load growth and to maintain transmission transfer capabilities, within the OSC-20 zone on approximately 17 acre of United States Forest Service land near Central. Rocky Mountain Power/Roger Rigby, applicant.

The Planner noted this is the 2nd extension on this particular item and public utilities are conditionally approved within the OSC-20 zone. The purpose of this zone is to permit the use of open space land within the county for uses compatible with the protection of the natural and scenic resources of the county for the benefit of present and future generations. As previously reported, the Red Butte Substation expansion project was approved by the Dixie National Forest Pine Valley Ranger District. The substation is located about one mile west of Central, Utah. Once the construction has been completed there will be no more traffic than what is already occurring for maintenance of the current substation. The transmission planning studies have determined a need to provide a 345 kV shunt capacitor bank by 2010, and voltage support by 2011 to maintain transmission capacities and service to the southwest Utah area. The expansion of the Red Butte Substation allows the installation of infrastructure needed to support area load growth, and also optimizes the use of existing facilities. Previously, the commission reviewed a detailed report on development plan, standard mitigation measures and operating procedures.

Tom Heaton, representing Rocky Mountain Power, explained this project is required to supply voltage for Southwest Utah. Construction activity at the Red Butte substation is progressing as originally planned. The construction effort is aimed at expanding the substation to its current total size of thirty seven (37) acres. The following activities are expected to be completed prior to the end of 2010: pouring of all the foundations within the substation, installation of the main

November 23, 2010 (continued)

control building, installation of the 345 kV transformers, erection of other various major equipment and the seating of deplaned areas surrounding the substation. There have been no changes to the overall foot print plan of the substation and there have been no significant findings during ground disturbance work. The major construction is expected to be completed by May 2011, with minor construction continuing through August 2011, therefore, they request a one (1) year extension.

Commissioner Everett expressed concerns about fire protection.

Motion was made by Commissioner Everett to recommend approval of the Conditional Use Permit Extension, subject to the applicant submitting more information regarding the picture of the facility as it currently exist and an explanation of the fire protection, for a period of one (1) year. Commissioner Cropper seconded the motion, with all seven (7) commissioners voting aye.

Item #3. CONDITIONAL USE PERMIT EXTENSION Review permit to create pasture grounds, corral and stabling lease areas for horses and an equipment, storage area and work shop for the Kayenta development group within the OST-20 zone, a portion of Sec. 36, T41S, R17 W, and Sec. 1, T42, R17W, SLB&M, generally located south of Ivins. Terry Marten, applicant.

The Planner said once again, this is a 2nd extension review of a request for riding stables, training arenas, and fenced RV storage areas are conditionally approved within the OST-20 zone. The commission made findings that uses are similar to the listed conditional uses and judges by the planning commission to be in harmony with the character and intent of the zone. History shows previous attempts by Sheila Wilson, founder and Sunhawk Productions to establish a Native American Cultural Center at this location have diminished, the mortgagee, Terry Marten (Kayenta Development), would like to pursue viable options on his investment, until this area can be combined with surrounding future development, annexed to Ivins, and/or Ms. Wilson's past dream becomes a reality. Mr. Marten submitted a site plan, sanitary facilities, water, BLM right-of-way documentation, and engineering on flood way, flood plain and the erosion zone previously, although no building permit has been issued for the workshop.

The applicant was not present at this time.

Motion was made by Commissioner Christopher to table this item. Commissioner Ford seconded the motion, with all seven (7) commissioners voting aye.

Lance Anderson, representing the applicant, said Terry Marten has met with a gentleman from the Bureau of Indian Affairs to discuss bringing in youth to go horseback riding. He was informed by the commission that this Conditional Use Permit will not permit that type of activity and any changed use would need a new permit. Mr. Anderson said those are just ideas for the future, no changes are being made at this time.

November 23, 2010 (continued)

After reviewing photos of the property, the commission said some of the items being stored may be creating a nuisance and asked Mr. Anderson to convey this to Mr. Marten.

Motion was made by Commissioner Everett to recommend approval of the Conditional Use Permit Extension, subject to current photos being received at the next review, for a period of one (1) year. Commissioner Christopher seconded the motion, with all seven (7) commissioners voting aye.

Item #4. CONDITIONAL USE PERMIT Request permission to establish a staging area and locate a temporary office trailer for I-15 Blackridge to Iron County freeway construction at New Harmony Farms. WW Clyde & Co. /Kamran Abolhasani, agent and Penny Weston, Landowner.

The Planner explained that the applicant would like to locate a staging area east of the New Harmony I-15 Interchange for the construction of I-15 from the Blackridge to the Iron County line. The project will begin in December 2010 and continue to August 2011. The site plan shows the location of a 24' x 60' office trailer, which will be located on an existing pad used for a double-wide and the staging area is west of this location. These types of uses are conditionally approved in the county and the applicant indicates there is a need for a staging area for this project, with this being an ideal location near the interchange. Penny Weston purchased this property which was previously owned by Evan Anderson and used as a trailer park, so the commissioners should be familiar with the location.

Ben Park, representing WW Clyde, said this site is for the office trailer, tools and fencing materials. They will stage all their major materials down at the Sunroc site in Pintura. The intended use for the office will be mainly for meetings. The initial contract will be through July and they will renew on a month to month basis after that. He explained that the asphalt overlay will not start until April, but they will begin at mile post 42 replacing fence and guardrails this winter. Sometime in January they will start widening the north bound lanes.

Motion was made by Commissioner Balen to recommend approval of the Conditional Use Permit requested by WW Clyde, for a period of one (1) year. Commissioner Cropper seconded the motion, with all seven (7) commissioners voting aye.

Item #5. CONDITIONAL USE PERMIT Request permission to locate four (4) wind towers on State Land near Anderson Junction. Jerry Eves/Southwest Wind Energy, applicant and Bob Mason, agent.

The Planner informed the commission that this is a review for a wind energy project located at Anderson Junction. The four (4) towers will be located on SITLA and they have issued a letter stating they have accepted the application for processing, supporting their efforts, and asking for favorable consideration on the CUP. Included herein for the commissions review is the application, SITLA letter, public notice photo, waivers, noise analysis (preliminary), shadow flicker analysis, FAA letters, environmental studies, right-of-ways and visual impacts. The

November 23, 2010 (continued)

application report mentions a feasibility study several times that may not be a part of this packet. The BLM permitting on airspace/encroachment (setbacks) has not been submitted. There was a petition submitted by the property owners at Anderson Junction who are in opposition to this project.

Todd Edwards, County Engineer, explained that the county received this application last week and it's fairly extensive. He noted some concerns with the application in regards to our ordinance. Mr. Edwards went through the county ordinance line by line and noted the applicants' application also addresses the ordinance line by line. He provided the commission with the following copy of his review of the application:

Wind Turbine Review for the Conditional Use Permit Application for the Anderson Junction Power Project

Applicant: Jerry Eves

Engineer: Robert Mason, P.E. Northern Engineering

Reviewed by Todd Edwards, County Engineer, November 22, 2010

Section 10.25.040 of the Washington County Zoning Ordinance Title 10 Chapter 25 Wind Energy System and Facilities

Review is as per each section of the ordinance as it pertains to 10.24.040 Requirements – Wind Energy System, Large

Section A.: Wind Energy Application

An application has been submitted.

Section B. Design Standards

B-1 okay

B-2 okay

B-3 okay

B-4a Setback is not met from property lines. Is a setback easement from BLM, Forest Service and SITLA a substitute for this requirement? An easement of approx 500' would be needed from the BLM, Forest Service and neighboring Sunroc Gravel Pit (SITLA prop).

B-4b The ordinance does allow a "setback waiver" but these waivers have not yet been provided.

B-4c okay

B-5 Noise study has not been peer reviewed by an independent qualified party as required by our ordinance. The developer submitted information from a DOE report that does not address noise levels at ½ mile. The Utah Governor's report mentioned is not provided or available. A "Noise Study" is required by our ordinance and the "Preliminary Noise Analysis" provided is not a "Noise Study". The analysis addresses existing conditions of background noise at the site,

November 23, 2010 (continued)

but does not determine if the “Thresholds for Noise” that are required in our ordinance will be met. The “preliminary noise analysis” does not appear to be conducted by a “qualified acoustical consultant” as required by our ordinance. The ordinance does allow a “setback waiver” but these waivers have not yet been provided.

B-6 The ordinance does allow a “setback waiver” but these waivers have not yet been provided. Our ordinance states that “Any voluntary waiver or reduction agreement must be submitted with the conditional use permit application”. Multiple waivers from both public agencies and private individuals are needed.

B-7 a okay

B-7b FAA will require synchronized red lights to be installed on the wind turbines.

B7-c okay

B7-d okay

B7-e A “shadow flicker analysis” is required by our ordinance since there are residences and Interstate 15 within 1.25 miles of the turbines. A one-page exhibit was submitted that seems to show that shadow flicker may impact I-15. No analysis was provided to interpret the exhibit. The submitted “shadow flicker analysis” appears to be inadequate to determine possible impacts.

B7-f No landscape or screening plan was submitted. Lighting and “dark sky compliant” information was not provided.

B-8 okay

B-9 okay

B-10 The construction drawings show 20-foot wide access roads which is the minimum width required by the Wildland-Urban Interface Area Requirements. The roads show to be “all-weather” by having 8-inches of compacted road base. This appears to meet the minimum access requirements. No water supply source is shown on the drawings or discussed in the presented materials. Usually a water supply source is provided within 1000 feet of a building or structure and is adequate to protect buildings and structures from exterior fire sources or to suppress structure fires. The height of the structure seems to suggest that having the 50-foot clear space around the tower base indicated by the developer may not be sufficient to prevent fire from the turbine from igniting nearby forested lands.

Section C Permit Application.

The applicant shows the intended locations of power lines and a needed substation for the project to be located within Toquerville. Approval of this permit should be subject to Toquerville granting approval of the substation and power lines. This section of the ordinance suggests that the County may require a development agreement for the project. A development agreement may be required as a condition of the permit and it should address tax issues for the property.

Section D. Conditional Use Permit.

D-1 Project rationale was not provided with the application. According to the permit application the project rationale was provided separately with a feasibility study. The feasibility study was not formally submitted or generally available for review. Therefore the estimated construction schedule, project life, phasing, and likely buyers or markets for the generated energy should be provided.

D-2 okay

November 23, 2010 (continued)

D-3 The construction drawings provided do not show the existing inhabitable structures and residentially-zoned lots within 1.25 miles of the project. Several aerial photos of the site show some structures but they are not identified. Revegetation plans are not provided in the construction drawings.

D-4 The feasibility study was not formally submitted or generally available for review. Therefore, no analysis of local economic benefits has been provided for review. These items should include estimated project cost, generated property taxes and local sales taxes, percent of construction dollars to be spent locally, and the number of local construction and permanent jobs.

D-5 Our ordinance requires the applicant to submit a “view shed analysis of the project, including visual simulations of the wind energy system and any significant planned structures or improvements, such as new roads on a hillside or substations.” The submitted photos of existing conditions do not provide the “view shed analysis “required in our ordinance. The planning commission may require a 360-degree computer analysis to map the lands within a defined radius of a location that would likely be able to see an object.

D-6 No information is given concerning the “Wildlife habitat areas and migration patterns, including avian and bat data for the project area”.

D-7 It is unknown if the applicant is meeting all State and Federal guidelines, laws and regulations regarding environmental issues. The applicant states that there are no issues in his application.

D-8 No plan was submitted to address solid waste or hazardous waste as required by our ordinance. The applicant has indicated that the chosen contractor will provide these plans.

D-9 okay

D-10 No dismantling plan is given to address the restoration of the roads for the project, since the developer believes the site will likely be upgraded and the useful life of this project is considered to be indefinite.

D-11 Only “ice throw” is addressed as a potential public safety concern. Other potential safety concerns may be fire involving the turbine or structural failure of the tower or blades.

D-12 Noise limitation information given is not sufficient to demonstrate compliance with 10.25.040(B) (5).

D-13 Shadow flicker information given is not sufficient to demonstrate compliance with 10.25.040(B) (7) (e).

D-14 No information has been provided to show that the applicant has conducted a “Licensed Microwave Search and Worst Case Fresnel Zone (WCFZ) Analysis, including consultations with the National Telecommunications Information Administration (NTIA), Interdepartmental Radio Advisory Committee (IRAC) and National Weather Service” as required by our ordinance. A letter has been provided, in appendix E, by one local wireless provider stating his opinion that the project would not cause radio frequency interference.

D-15 No finalized leases or agreements for the life of the project or for decommissioning of the project have been submitted. It appears that the developer plans to finalize all agreements and easements after obtaining the Conditional Use Permit, but prior to commencing construction.

D-16 Other probable and significant impacts, as identified through the review process will need to be addressed prior to issuance of any Conditional Use Permit.

November 23, 2010 (continued)

The Chairman asked if staff had reviewed these concerns with the applicant. Staff explained they did not receive the completed application until last week and they did not have a chance to review some of these concerns with the applicant. The commission discussed whether they should even review this Conditional Use Permit prior to the applicant addressing the concerns of the staff. Mr. Edwards said the applicant has not met all the requirements of the ordinance at this time.

Commissioner Ford and Commissioner Everett expressed concerns about the application being incomplete and Commissioner Ford stated they should come back for Planning Commission review after the application is complete and the necessary waivers are received.

Jerry Eves, applicant, said the application was submitted prior to the last staff meeting. In response to the commission, he explained they are on a time constraint in order to obtain their “free money” from the government, which will expire at the end of the year. He also said he didn’t realize staff still had some questions and they will come back after they address those issues. He clarified that they were only asking for the Conditional Use Permit at this time, not the permit to construct the towers.

The Chairman asked Mr. Edwards, the County Engineer, if his concerns would impede or adversely impact the Conditional Use Permit. Mr. Edwards said the ordinance, as he reads it, requires this information to be given prior to the issuance of a Conditional Use Permit.

Commissioner Wilson asked for clarification on Mr. Edwards’s statement. He asked if all of this information had to be received prior to the issuance of the permit. Stating the applicant needs the permit to obtain their grant or funding. Commissioner Wilson objected to the commission holding up this project with such tight red tape, saying they could hold up this project for years. He said he did not disagree with Todd’s review, he just disagreed on the commission’s ability to give some type of go ahead.

Mr. Edwards said the problem with the ordinance is it has a lot of places where it says “shall” and “must.” For example it says you shall submit a shadow flicker study. The ordinance does not give you an option to not do it. He did not know how the commission could proceed with out having the items required by the ordinance by saying “shall” or “must”. He said the ordinance could be changed to say “may” or “should” and then the commission wouldn’t have to require it.

The commission and staff discussed the intent of the ordinance. They recognized that this was the first application under the new ordinance and they knew they might run into some problems the first time through. The Deputy Attorney noted that if the commission made a motion with out all the required information it would have to be made subject to that information being received.

The applicant said they are not ready to start construction but their lender, Zion’s Bank, wants to see that they can get the Conditional Use Permit, so you know you’re not going to be shut down, even if it is subject to. Their deadline is December 5, 2010.

November 23, 2010 (continued)

The Chairman asked Mr. Edwards if there was any reason they couldn't issue a Conditional Use Permit subject to. Mr. Edwards said he doesn't like to see that because sometimes things get over looked, but the commission could do that.

Mr. Everett suggested the applicant meet with staff first and then come back. He also suggested arranging a special meeting.

Rachelle Ehlert, Deputy Attorney, pointed out on page 10 of the ordinance the paragraph reads:

- D. Conditional Use Permit. Following the provisions of Chapter 18, Washington County Code, additional or more thorough consideration shall be given to the following as the County determines whether the project needs to be approved, denied, or conditionally approved:

She then stated the additional fifteen (15) items that follow may be reviewed as the County determines; which gives the commission some discretion.

The commission continued to discuss the option of recommending approval subject to or having the applicant come back at a later date with all the required information.

Kurt Allen, with Northern Engineering, said he does not think the entire commission has reached a comfort level to be able to make a final decision on this project. He assured the commission that they have been working hard to meet all the requirements of the ordinance, so there is a comfort level. He included they have pile of studies and information, including environmental studies. They are prepared today to show a presentation on the shadow flicker and some of their other concerns. He suggested moving forward in a positive way and resolving these issues with staff. He expressed interest in receiving a Conditional Use Permit subject to, so they could move forward. In response to the commission, he stated he did not think they provided a lack of information he thought staff needed a clarification of that information.

Todd Edwards disagreed and said there is definitely a lack of information and gave some examples of the information the applicant was lacking. He did not want it indicated that he was trying to stop the project; he was simply pointing out that their application was not complete.

Chairman Stucki asked in which way the application was not complete in regards to Chapter 18 of the ordinance. He stated he could see where it was not complete in regards to Chapter 25, but Chapter 18 is the Conditional Use process. He said in everything he sees they are consistent with Chapter 18. He read the purpose of each chapter and said Chapter 18 governs. Mr. Edwards noted that the applicant used Chapter 25 and they did not use the guidelines of Chapter 18. The Deputy Attorney said the commission could use the standards from either chapter. Mr. Edwards stated they are applying for a Conditional Use Permit for a Commercial Wind Energy Farm and Chapter 25 does pertain to that and it should be followed. If Chapter 25 is not used for the purpose it was written, it should not have been written.

November 23, 2010 (continued)

Jerry Eves, applicant, said he would be uncomfortable with the commission passing this subject to, considering the flaws in the ordinance. He said if he could get a Conditional Use Permit recommendation and then meet with staff, he could have something documented to show for his funding.

In response to the commission, Mr. Edwards gave a few more examples of why the application was not complete.

The Chairman said they could be there a long time trying to get a consensus; therefore, they should just go for the vote.

Commissioner Christopher said the commission needed to respect the people of the county to make sure they are making the right call instead of making it about the money. She said Mr. Edwards understands the engineering and when he tells them what is missing they need to accept what is missing. Then we can make a judgment about whether or not to move forward. She explained the commission has to dismiss the money part of it, but regardless of what happens today they are not opposed to the plan.

Commissioner Wilson said he was confident the applicant would meet the county's requirements.

Motion was made by Commissioner Balen to recommend approval of the Conditional Use Permit as requested by Southwest Wind Energy, subject to the applicant working with staff to clarify any of the concerns that staff has and to provide reasonable information that staff is comfortable with. Commissioner Wilson seconded the motion, with two (2) commissioners voting aye and five (5) commissioners voting nay.

Motion was made by Commissioner Ford to table this item for further review. Commissioner Christopher seconded the motion, with all seven (7) commissioners voting aye.

Item #6. WORK MEETING: DISCUSSION ITEM/WIRELESS COMMUNICATION FACILITIES. Review and consider amendment on wireless telecommunication facilities to establish minimum requirements and regulations of such systems, Chapter 21 of the Washington County Zoning Ordinance. County initiated.

The Planner said the commission may recall the County Deputy Attorney, Rachelle Ehlert has been working with the planning commission on this ordinance for the past 8 months, since the implementation of pending Land Use Ordinance Review presentation on wireless communication facilities on March 9, 2010. This amendment will be for wireless communication facilities Chapter 21 of the Washington County Zoning Ordinance. Rachelle provided ordinance samples via e-mail and has recommended something similar to what St. George City has recently adopted. Staff agrees that these changes could be reviewed by going directly to the advertising process for a hearing on the 14th of December.

November 23, 2010 (continued)

Motion was made by Commissioner Balen to table this item until the next meeting. Commissioner Ford seconded the motion, with all seven (7) commissioners voting aye.

Item #7. STAFF DECISIONS Review of decisions from the Land Use Authority Staff Meeting held on November 16, 2010. County initiated.

The staff meeting convened at 9:30 a.m. Staff Members Present: Deon Goheen, Planning & Zoning Administrator; Todd Edwards, County Engineer; Tina Esplin, Washington County Water Conservancy District; Darwin Hall, Ash Creek Special Service District Director; Robert Beers, Southwest Utah Public Health Department; and Becky Marchal, Questar Preconstruction Specialist;

Excused: Ron Whitehead, Public Works Director Kurt Gardner, Building Official; Rachelle Ehlert, Deputy Civil Attorney; and Paul Wright, Department of Environmental Quality.

CONDITIONAL USE PERMIT EXTENSIONS:

A. Request permission for a 2nd dwelling for a family member within the RA-5 zone, BRR-1-23-NS, located at 2645 S. Old Hwy 91, in the New Harmony Valley. Nick Young, applicant.

This is the 3rd extension review and second dwellings are conditionally approved within the RA-5 zone as a single family dwelling for a family member. The applicant previously met the requirements for the use permit by submitting a site plan, septic permit from the Southwest Utah Public Health Department (SWPHD) and a letter from the Mountain Springs Water Company allowing for a water connection. The property is accessed from Old Hwy 91 and the plan meets all 25' setback requirements. The Building Department completed an insulation rough inspection (Permit No. 5815) on April 16, 2010 and extended this permit for 180 days on October 13, 2010. **The staff granted approval of the extension for another one (1) year period.**

B. Request permission for a single family dwelling within the A-20 zone in the Mountain Meadows area. Tom Lamb, applicant.

This is an automatic annual review, with the building department tech reporting there were no inspections. Todd Edwards indicated that the building has been completed. This particular parcel is 5 acres within the A-20 zone near Mountain Meadows, which was verified by deed as a grand fathered parcel split in 1969, prior to the adoption of the zoning ordinance in 1972. There are two other parcels in conjunction with this piece of land. The applicant met the requirements for the use permit by submitting a site plan, septic permit from the Southwest Utah Public Health Department (SWPHD) and showing water rights and quality of water from a spring. The applicant accesses the property off SR-18 onto a Forest Service Road, which was previously recognized as a public access road for the Barton Imley Subdivision. **Staff granted approval of the Conditional Use Permit extension for another year.**

C. Request permission for a Casita within a garage in Canyon Trails Subdivision located in Dammeron Valley. Tony & Robin Vaughn Sorensen, applicant.

November 23, 2010 (continued)

This is an automatic annual review and the permit was issued, but was never picked up. Previously the applicant requested an accessory dwelling within a previously constructed garage and they thought they went through the approval process when ordinance was being addressed on accessory dwelling. Now there is a new contractor who will be doing the remodel. The applicant submitted a site plan and floor plan for staff review. The septic system installed for the main dwelling is adequate for the 1 bedroom added in the accessory dwelling. This meets the criteria set forth for accessory dwelling units. Due to permit status and changes in relationships, this request may not continue. **Staff granted approval of the Conditional Use Permit extension for another year or until permit is void.**

Item #8. COUNTY COMMISSION ACTION REVIEW Review of action taken by the County Commission on Planning Items. County initiated.

The Planner said the County Commission did approve the following items, as recommended by the Planning Commission: 1) Qwest's request for additional fiber optics in multiple locations within the county and 2) The General Plan, Public Lands Portion.

Item #9. COMMISSION & STAFF REPORTS: General reporting on various topics. County initiated

Commissioner Everett made a motion to adjourn the meeting. Commissioner Balen seconded the motion, with all seven (7) commissioners voting aye. Chairman Mike Stucki adjourned the meeting at 3:30 p.m.

Darby Klungervik